

REMARKS

Applicants submit this Amendment After Final in reply to the Office Action¹ mailed August 17, 2010, (the "Office Action"). By this Amendment, Applicants have amended claim 9. Accordingly, claims 9, 10, and 13-27, of which claim 9 is independent, are pending in this application. The originally-filed Specification, drawings, and claims fully support the subject matter of the amendments to claim 9. Thus, this Amendment introduces no new matter.

I. Rejections Under 35 U.S.C. § 112, second paragraph

In the Office Action, claims 9, 10, and 13-27 were rejected under 35 U.S.C. § 112, second paragraph for allegedly being indefinite. Regarding claim 9, the Office Action alleges that "the recitation 'directly shelling the grains' renders the claim indefinite because it is not clear how a process of 'directly shelling' differs from a process of 'shelling.'" Office Action, p. 2. While not conceding the propriety of the Office Action's statements, claim 9 has been amended so that the step of "adjusting a moisture of the conditioned grains by superficially wetting the grains in a second wetting process; [is] directly followed by shelling the grains after the second wetting process in a shelling machine such that outer hulls of the grains are removed." Sufficient support for this amendment may be found in, for example, originally-filed claim 7, disclosing a device for performing the method of claim 9 and holding that a wetting aggregate is followed by a

¹ The Office Action may contain statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

shelling machine. Furthermore, basis for this amendment can be found in the abstract, holding that the outer hulls are removed. The hulling is further corroborated on page 4, lines 1-4 of the Specification which refers to a shelling degree of approximately 4 %, which may be interpreted by a person of ordinary skill in the art as removal of the outer hulls. Applicants respectfully submit amended claim 9 now further defines that the second wetting process is directly followed by shelling the grains, i.e. that no further processing steps are interposed between the second wetting process and the shelling of the grains. Amended claim 9 now particularly points out and distinctly defines the subject matter for which protection is sought. Accordingly Applicants submit that the rejection to claim 9, as well as dependent claims 10, 13, and 14-27 has been rendered moot and should be withdrawn.

II. Rejections Under 35 U.S.C. § 103 (a)

In the Office Action, claims 9-10, 13, 14, 17, 18, and 21-27 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable under U.S. Patent No. 5,650,018 to Müller ("Müller") in view of U.S. Patent No. 5,025,993 to Satake ("Satake"); and claims 15, 16, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable under Müller in view of Satake, and further in view of U.S. Patent No. 4,314,925 to Paquette ("Paquette").

In regard to independent claim 9, Applicants respectfully disagree with the Office Action's characterization of Müller. In particular, Applicants note that the Office Action fails to consider the complete wording of present claim 9 in determining patentability over Müller. Specifically, the Office Action indicates, as noted above, that the term

"directly" is allegedly indefinite. The MPEP § 2173.06 provides guidance on how to consider a prior art rejection in conjunction with an alleged indefiniteness of said claim. As such, the MPEP holds: "a rejection under 35 USC 103 should not be based on considerable speculation about the meaning of terms employed in a claim or assumptions that must be made as to the scope of the claims." Furthermore it is held that "[a]ll words in a claim must be considered in judging the patentability of a claim against the prior art". See *id.* Amended claim 9 requires that the second wetting process be "directly followed by shelling the grains after the second wetting process." The Office Action continues to rely on Figure 7 of Müller in holding that "the grain is scoured after a second wetting process in a scouring machine (see Figure 7 wherein grain is subjected to a second wetting process at 22" and subsequently scoured at 42')." Office Action, p. 7.

Applicants respectfully disagree. Scouring differs considerably from shelling. Shelling results in the removal of an external shell of a grain. In contrast, scouring results in the polishing and/or cleaning of a grain. Indeed, Müller discloses scouring the outermost grain skin material which results in "0.3 - 2% being scoured away from the grain." See Müller, col. 4, line 66- col. 5, line 1. By contrast, the present disclosure refers to "shelling." Shelling results in displacement of the shell, i.e. a displacement of approximately 4% of the weight of the grain. See Specification, p. 4, ll. 1-4.

Moreover, as described in the previous reply dated June 8, 2008, and as a further aid in depicting the differences between the subject matter of the present application and the disclosure of Müller, Applicants present the below schematic.

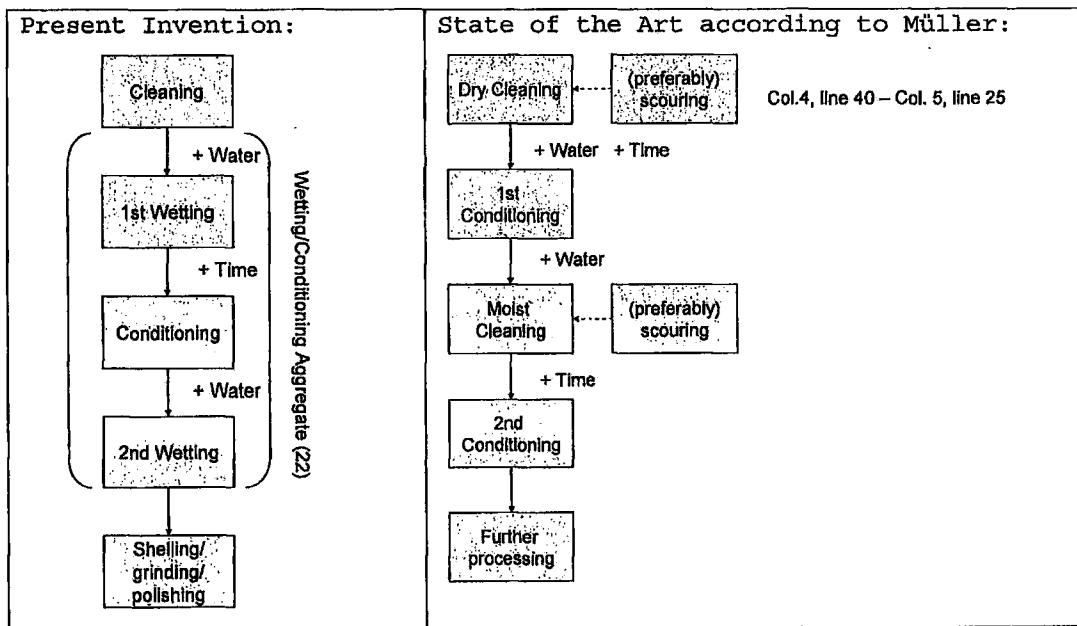


Figure 7 of Müller depicts a series of consecutive wetting and scouring steps (the wetting steps have reference numbers 22' to 22," whereas the scouring steps have reference numbers 42'). Accordingly, Figure 7 discloses a process of wetting-scouring wetting-scouring-wetting. Present claim 9, in contrast, discloses a first wetting step, a conditioning and a second wetting step directly followed by shelling the grains after the second wetting process. Müller therefore fails to disclose directly shelling the grains after the second wetting process.

In the Office Action, the Examiner combines together the wetting and scouring steps of Müller to construct a case of prima facie obviousness. However, the MPEP states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention". See MPEP 2141.02. Müller actually provides a disincentive to a person of ordinary skill in the art from merging process steps in the art of milling. Indeed, Müller states that "the

presumed optimisation attempts of more recent times, with much overlapping or mixing of the basic operations, have afforded advantages only for particular partial aims. Taken together, on the other hand, their effect has been rather a retrograde one for the practical world of milling. Therefore, milling practice declined the aforesaid proposals." See Müller, col. 3, ll. 55-61. Müller remains faithful to this principle in Figure 7 by separating the individual scouring and wetting steps.

Furthermore, the Office Action alleges that the steps of scouring and shelling produce the same result and are therefore to be considered equivalent. Office Action, p. 7. However, the Office Action fails to show evidence pertinent to the art sustaining such an allegation. It is thus respectfully requested that the Examiner provide documentary evidence for this technological teaching in the next communication. Müller states that scouring results in "0.3 to 2 % being scoured away." Müller, col. 4, line 66. By contrast, the present disclosure refers to a step of shelling. Shelling according to the present disclosure results in the displacement of the shell, i.e. a displacement of approximately 4 % of the grain for example. Specification, p. 4, ll. 1-4; p. 5, ll. 10-14.

Furthermore, amended claim 9 now further defines the meaning of shelling in said claim by requiring that, "such that the outer hulls are removed." For a person of ordinary skill in the art it would be evident, that a scouring at 0.3 to 2 % would not possibly result in the outer hull being removed. Müller, if at all, would only achieve a removal of the outer part of the hull by subsequent scouring steps, as can be seen from Figure 7.

Accordingly, Müller fails to disclose, teach, or otherwise suggest the features of amended independent claim 9 including "adjusting a moisture of the conditioned grains

by superficially wetting the grains in a second wetting process; directly followed by shelling the grains after the second wetting process in a shelling machine such that outer hulls of the grains are removed.” Further, even if Satake and/or Paquette disclose what the Office Action alleges, which Applicants do not concede, neither Satake nor Paquette cure the deficiencies of Müller with respect to independent claim 9.

Müller, Satake, and Paquette, taken individually or in combination, do not teach or suggest each and every feature of amended claim 9. Accordingly, a *prima facie* case of obviousness has not been established and Applicants respectfully request that the Examiner withdraw the rejection of claim 9 under 35 U.S.C. § 103(a). Further, claims 10, and 13-27 depend from allowable independent claim 9, and are allowable at least due to their dependence as well as their additionally recited features. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 10 and 13-27 under 35 U.S.C. § 103(a) over Müller, Satake, and/or Paquette.

III. Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 9, 10, and 13-27 in condition for allowance. This Amendment should allow for immediate action by the Examiner.

Applicants submit that the entry of this Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

Should the Examiner have any questions, or believe an Examiner's amendment may result in an allowance, the Examiner is kindly requested to contact the undersigned.

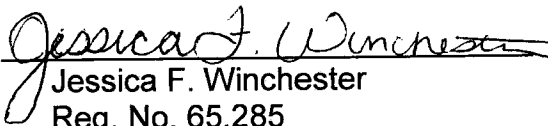
In view of the foregoing remarks, Applicants submit that the claims, as amended, are neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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